

REMARKS

Applicants are proposing to delete erroneous subject matter from the Written Description and to amend the claims so as to obviate the rejection under 35 U.S.C. § 103(a).

Amendments to the Written Description

Examples 48-55 are erroneous in that, in the table, the third column should have read "ratio of actives remaining after tannic acid treatment over those remaining after deactivant treatment. The result of the error is that the figures presented in the third column are the reciprocal of what they should have been. For example, the value for Germall II which is shown as 1.5 should, in fact, be 0.667. It is believed that attempting to correct the data for Examples 48-55 would be construed as new matter and therefore Applicants have chosen to simply delete these examples.

Deletion of Examples 48-55 necessitates the renumbering of Examples 56-59. It is submitted that the method of renumbering these examples conforms to the requirements of 37 C.F.R. § 1.121(b).

Amendments to the Claims

Applicants are amending claims 1, 2, 3 and 7 to delete the inclusion of 6-isopropyl-m-cresol (thymol compound xvii). Claim 18 is being amended to make the claim an independent claim and to specify that the claimed method uses a composition comprising a particular percentage of thymol. Claim 4 is being amended to delete an extraneous comma. Claim 19 is being amended to correct a typographical error; the compound recited in that claim is identified as (xviii).

Rejection Under 35 U.S.C § 103(a)

Claims 1-7 and 18 have been rejected as obvious over Blanc U.S. Patent No. 5,635,132 in view of Rombi PCT Publication No. WO 96/09762.

Claims 1-7 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blanc (U.S. Patent No. 5,635,132) in view of Rombi.

Blanc teaches that a composition containing thymol (6-isopropyl-m-cresol) in an aliphatic solvent can be used to neutralize the allergenic ejecta of dust mites. See col. 2, lines 1-11; col. 3, lines 63-67; and Abstract. Note that Blanc specifically teaches that the *ejecta* of the dust mite is the allergen and that the desire of the invention is to treat the ejecta, not the dust mite. See col. 3, lines 39-40 and col. 4, lines 14-16. The composition is sprayed in aerosol form throughout the room to be treated so that it may contact all surfaces within the room including "all the elements of furniture" (col. 3, lines 43-56) and specifically, mattresses (col. 5, lines 34-36). Although Blanc does not disclose that the dust mites are Der-f and/or Der-p, Rombi discloses that these are the two primary species of house dust mites (page 1, lines 6-11). Therefore, it would have been obvious to one of ordinary skill in the art that the dust mite *allergens* being denatured by the method of Blanc are those created by Der-f and/or Der-p.

Moreover, with respect to treatment of a "textile surface" or "upholstered furniture," it is known that mattresses are covered with a textile surface. Moreover, the definition of "furniture" would obviously include upholstered items, which have a textile surface.

This rejection is respectfully traversed. The foregoing discussion will be separately directed to (A) claims 1-3, 7 and 18 and to (B) claims 4-6.

Blanc discloses the use of a "rich formulation of ten constituents" – col. 3, line 57 – for use in a method for decontamination of indoor spaces. Blanc's method is intended to remove various undesirable substances, including acarids. The Rombi reference is used as a secondary reference for its disclosure of two acarid species, Der-f and Der-p, commonly identified as "dust mites". The only one of Blanc's "ten constituents" that is included in Applicants' claims is thymol (6-isopropyl-m-cresol).

Applicants are proposing to amend claims 1-3 and 7 to delete “6-isopropyl-m-cresol”, which amendment would clearly remove any reasonable basis for rejection over the Blanc reference. It is noted that claims 17, 19 and 20, which recite deactivants other than thymol, are regarded by the Examiner as containing allowable subject matter. It is submitted that, with the deletion of 6-isopropyl-m-cresol from claims 1-3 and 7, said claims would be allowable over the cited references.

Claim 18 is included in the obviousness rejection over Blanc in view of Rombi. Applicants are now proposing to amend this claim to cast it into independent form and to recite that the method uses a composition comprising from 0.01 to 3% of 6-isopropyl-m-cresol. Support for this amendment is found in the Written Description at page 6, lines 18-20. Claim 18 as originally presented covered a method for deactivating allergens present on a textile surface; the proposed amended version of this claim covers the same basic method. As pointed out in the amendment filed in August 2003, the Blanc reference does not disclose the treatment of textile surfaces. Blanc teaches that one should spray an aerosol into the center of a closed room so that all “elements of furniture” in the room are exposed to the decontaminant product. Col. 3, lines 43-52. And, after allowing sufficient time for the product to act, one airs out the room and cleans the surfaces with a simple damp wipe – col. 3, lines 53-56. The only reasonable interpretation of this statement about wiping the surfaces is that the surfaces are hard surfaces, rather than textiles.

In order to advance the prosecution of this application, Applicants are including, in their amended claim 18, the requirement that the composition to be used comprises from 0.01 to 3% 6-isopropyl-m-cresol. Blanc requires that, when phenolic derivatives such as thymol are used in the “rich formulation”, they be present in an amount of at least 4%. As now amended, claim 18 requires that the deactivant in the deactivant composition be thymol in an amount of from 0.01 to 3% of the composition.

Claims 1-3, 7 and 17-20 – the “Group (A)” claims – involve a method step of contacting allergens present on a textile surface. Claims 4-6 – the “Group (B)” claims – are more narrowly drawn in that the method specifically requires application to fabric materials. The Blanc reference was also used to support a rejection of claims 4-6 but is Applicants’ contention that Blanc is even less applicable to these claims than it could possibly against the Group (A) claims. Applicants’ claim 4 requires that the deactivants be applied directly to fabric materials. This is clearly contrary to the method of application disclosed by Blanc. The Examiner’s attention is directed to col. 3, lines 38-55. The reference clearly says that the product is defused “as a true aerosol from the centre of the room” – col. 3, line 47. And, further along, the reference states that the disclosed process is “able to treat the house dust directly in order to detoxify it at the origin even before it can be deposited on the surfaces and then concentrated by the acarids” – col. 5, lines 48-51. This conforms to the more general statement – col. 3, lines 38-40 – that “rather than treating the surfaces and acarids directly, it would be better to treat the source of pollution, the dust itself”.

The use of Rombi as a secondary reference does not serve to strengthen the obviousness rejection. The only “deactivant” disclosed by Rombi is glutaraldehyde. Essentially, the essence of the Rombi disclosure can be gleaned from page 6, line 25 through page 7, line 1. The disclosed compositions are acaridal compositions that contain glutaraldehyde as an additional ingredient. “Glutaraldehyde” has previously been deleted from Applicants’ claims 4 and 6.

Conclusion

In view of the foregoing amendment and these remarks, it is believed that all claims in this application are now in condition for allowance. Entry of the amendment is therefore requested. However, even if the Examiner does not believe all of the claims to

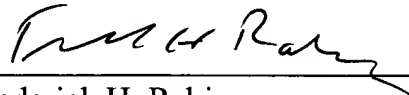
Applicant : Janette SUH et al.
Serial No. : 09/509,308
Filed : May 25, 2000
Page : 20 of 20

Attorney's Docket No.: 08291-435001 / 10184P1-US

be allowable, it is nevertheless requested that the amendment be entered since it would place this application into better condition for appeal.

Respectfully submitted,

Date: 3 March 04



Frederick H. Rabin
Reg. No. 24,488

Fish & Richardson P.C.
45 Rockefeller Plaza, Suite 2800
New York, New York 10111
Telephone: (212) 765-5070
Facsimile: (212) 258-2291